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March 22

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CONCORD, N.H.

Honorable Harry J. Danforth
House of Representatives
State House
Concord, New Hampshire

Dear Mr. Danforth:

Miss Alexander has asked me to reply to your recent inquiry whether imposing a tax upon the sale of cigars made outside the State but exempting from such tax cigars made in New Hampshire would be permissible.

One of the most concise statements of the principles applicable to the question ever made by the Supreme Court of the United States is found in the case of Guy v. Baltimore, 100 U.S. 434, 439-440, as follows:

"... [It] must be regarded as settled that no state can, consistently with the Federal Constitution, impose upon the products of other states, brought therein for sale or use, . . . more onerous public burdens or taxes than it imposes upon the like products of its own territory. If this were not so, it is easy to perceive how the power of Congress to regulate commerce with foreign nations and among the several states could be practically annulled, and the equality of commercial privileges secured by the Federal Constitution to citizens of the several states be materially abridged and impaired."

The view thus stated has, whenever the question arose, been consistently maintained. See e.g. Darnell & Son Co. v. Memphis, 208 U.S., 113.

Your question must, therefore, be answered in the negative.

Very truly yours,

Warren E. Waters
Deputy Attorney General

WEW/T